

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.54 OF 2007

Mittal Court Premises Co-op.
Society Limited Appellants

versus

The MCGB and others Respondents

Mr.Pankaj Sutar i/by M/s.Khaitan & Jaykar for
appellants.

Mr.J.J.Xavier for respondents.

CORAM : A.S.OKA, J.

DATE : 01st March 2007

PC :

1. Heard learned advocates appearing for the parties. Admit. Taken up for hearing forthwith by consent of the parties.

2. The appellant preferred an appeal u/s 217 of the Bombay Municipal Corporation Act, 1888. There was a delay in preferring the said appeal. Therefore, an application was made before the learned Judge of the Small Causes Court for condonation of delay. The delay was only of 22

days. By order dated 10th October 2006, the application for condonation of delay has been rejected as a result of which an appeal preferred by the appellant stands dismissed.

3. Learned advocate appearing for the appellant submitted that since the delay was only of 22 days, the learned Trial Judge ought to have adopted a liberal approach and condoned the delay. Learned Advocate for the respondent submitted that Section 5 of the Limitation Act, 1963 will not apply to an appeal u/s 217 of the said Act of 1888 in the light of express provisions of the said Act. Reliance is placed on clause (a) of sub Section 2 of Section 217.

4. I have considered the submissions. A perusal of the provisions of the said Act of 1888 shows that there is nothing in the said Act which excludes the applicability of Section 5 of the said Act of 1963. Therefore, by virtue of Section 29(2) of the said Act of 1963, provision of Section 5 of the said Act of 1963 will apply to an appeal u/s 217 of the Act of 1888.

5. In the present case the delay was only of 22 days. A perusal of the application for

condonation of delay shows that the same was satisfactorily explained by the applicant. The learned Trial Judge has taken a very hyper-technical view of the matter. A liberal and justice oriented approach was contemplated while dealing with the application for condonation of delay.

6. Hence the appeal must succeed. The impugned order dated 10th October 2006 is quashed and set aside and Miscellaneous Application No.16 of 2006 is allowed. The concerned Court will proceed with the appeal in accordance with law.

(A.S.OKA, J.)